



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 10, 2004

Ms. Julia M. Vasquez
Senior Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2004-7746

Dear Ms. Vasquez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208712.

The City of Wichita Falls (the "city") received a request for information pertaining to the procurement by the city of a trunked radio communications system pursuant to a request for proposals. You indicate that the city intends to provide access to some of the requested information, but claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.110 and 552.137 of the Government Code. You also assert that the release of the submitted information may implicate the proprietary interests of third parties. You state, and provide documentation showing, that you have notified the following interested third parties of the city's receipt of the request for information and of their right to submit arguments to this office as to why the requested information should not be released to the requestor: Dailey-Wells Communications ("DWC"); M/A-COM/Tyco Electronics ("Tyco"); and RCC Consultants ("RCC"). See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have reviewed the submitted information and considered the submitted arguments.

Initially, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons,

if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Tyco and RCC have not submitted comments to this office in response to the section 552.305 notice; therefore, we have no basis to conclude that these companies have a proprietary interest in the submitted information. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, the city may not withhold any portion of the submitted information on the basis of any proprietary interest that Tyco or RCC may have in the information.

We next address your claim that some of the submitted information may be withheld under section 552.108(b)(1) of the Government Code, which excepts from disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." Generally, a governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). This office has on numerous occasions concluded that section 552.108 excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (holding that predecessor to section 552.108 excepts detailed guidelines regarding a police department's use of force policy), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding that predecessor to section 552.108 excepts sketch showing security measures for execution).

You state that some of the submitted information relates to a "system that will be used for purposes of confidential communications by City and County law enforcement personnel regarding the detection and investigation of crime within the City." We note that the city intends to use DWC's proposal for the purposes of this communications system. You further claim that release of this information could compromise criminal investigations. Having reviewed your arguments and the submitted information, we agree that the release of the information submitted as sections 1, 2, 3, 9 and 10 of the proposal submitted by DWC would interfere with law enforcement or crime prevention. Accordingly, the city may withhold this information from disclosure under section 552.108(b)(1) of the Government Code.¹

Lastly, we address your claim under section 552.137. As amended by the 78th Legislature, this section provides as follows:

¹ Because we reach this conclusion under section 552.108, we need not address any additional arguments against the disclosure of information in the proposal submitted by DWC.

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137(a) is applicable to certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. Section 552.137(a) is not applicable to the types of e-mail addresses listed in section 552.137(c) or to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. Based on our review of the submitted information, we find that the e-mail addresses contained within this information are not excepted from disclosure under section 552.137. *See* Gov't Code § 552.137(c)(2), (3). Accordingly, we conclude that the city may not withhold the e-mail addresses in Exhibit A pursuant to section 552.137 of the Government Code.

In summary, the city may withhold from disclosure sections 1, 2, 3, 9 and 10 of the proposal submitted by DWC under section 552.108(b)(1); and the city must release all remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

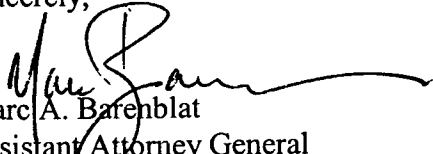
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,


Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/jh

Ref: ID# 208712

Enc. Submitted documents

c: Mr. Dale Chapman
Account Manager
Motorola, North American Group
Commercial, Government & Industrial Solutions Sector
2140 Luna Road, Suite 132
Carrollton, Texas 75006
(w/o enclosures)

Ms. Sharee Vareles, Esq.
Dailey-Wells Communications
3440 East Houston Street
San Antonio, Texas 78219
(w/o enclosures)

Mr. John Varney, Esq.
General Counsel
M/A-COM/Tyco Electronics
1011 Pawtucket Blvd.
Lowell, Massachusetts 01853
(w/o enclosures)

Mr. Greg Munchrath
RCC Consultants
10700 North Freeway, Suite 610
Houston, Texas 77307-1146
(w/o enclosures)